

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34479

STATE OF IDAHO,	)	2009 Unpublished Opinion No. 386
	)	
Plaintiff-Respondent,	)	Filed: March 16, 2009
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
ROBERT E. HARRIS,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

---

Appeal from the District Court of the First Judicial District, State of Idaho, Bonner County. Hon. Lansing L. Haynes, District Judge.

Order of restitution entered by the district court, affirmed.

Molly J. Huskey, State Appellate Public Defender; Elizabeth Ann Allred, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rosemary Emory, Deputy Attorney General, Boise, for respondent.

---

GRATTON, Judge

Robert E. Harris appeals from the district court's order of restitution. We affirm.

I.

FACTS AND PROCEDURAL BACKGROUND

Harris entered an *Alford*<sup>1</sup> plea to an amended information charging felony driving under the influence, I.C. 18-8004(1)(a), and misdemeanor malicious injury to property, I.C. 18-7001. Pursuant to a binding plea agreement, the district court imposed a unified sentence of three years, with one year fixed. The district court then suspended the unified sentence and placed Harris on supervised probation for three years. Subsequently, the district court conducted an evidentiary hearing to determine restitution to the malicious injury to property victim. The district court awarded restitution in the amount of \$1,500.00. Harris appeals from the order of restitution.

---

<sup>1</sup> See *North Carolina v. Alford*, 400 U.S. 25 (1970).

## II. ANALYSIS

The decision whether to order restitution, and in what amount, is within the discretion of the trial court, guided by consideration of the factors set forth in I.C. § 19-5304(7) and by the policy favoring full compensation to crime victims who suffer economic loss. *State v. Richmond*, 137 Idaho 35, 37, 43 P.3d 794, 796 (Ct. App. 2002); *State v. Russell*, 126 Idaho 38, 39, 878 P.2d 212, 213 (Ct. App. 1994). The trial court is directed by statute to base the amount of economic loss to be awarded upon the preponderance of evidence submitted to the trial court by the prosecutor, defendant, victim, or presentence investigator. I.C. § 19-5304(6). The determination of the amount of restitution is a question of fact for the trial court whose findings will not be disturbed if supported by substantial evidence. *State v. Hamilton*, 129 Idaho 938, 943, 935 P.2d 201, 206 (Ct. App. 1997). We will not overturn an order of restitution unless an abuse of discretion is shown. *Richmond*, 137 Idaho at 37, 43 P.3d at 796. When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the lower court reached its decision by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989).

Restitution may only be awarded for actual economic loss suffered by the victim. I.C. § 19-5304(1)(a) and (2). Economic loss is defined by statute as including, but not being limited to, "the value of property taken, destroyed, broken, or otherwise harmed, lost wages, and direct out-of-pocket losses or expenses." I.C. § 19-5304(1)(a). For the purposes of determining restitution, the value of property is defined as "the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime." I.C. § 18-2402(11)(a); *see also* I.C. § 19-5304(1)(c).

Harris contends that the district court's valuation of the property at issue was not supported by substantial evidence. Harris damaged the victim's 1989 Isuzu pickup truck. At the hearing, the victim testified that the vehicle had been purchased six months prior to the incident for approximately \$4,500.00. The victim presented photographic evidence of the extent of the damage. The victim presented an estimate for repair costs in the amount of \$5,218.24, and

testified that several repair shops declined to repair the vehicle and that it was deemed a total loss. The victim presented an internet printout showing a Kelley Blue Book value of a similar vehicle, in “excellent” condition at \$3,325.00. The Kelley Blue Book value presented was as of December 2007 and the incident occurred in September 2006. The victim testified that she believed the vehicle was in excellent condition, except that she was in the process of fixing the clutch. Upon cross-examination, she acknowledged that the vehicle may be characterized as in good condition, as opposed to excellent. In good condition, the value would be somewhat less than the Kelley Blue Book excellent condition. She testified, without objection, that in her opinion the vehicle was probably worth \$2,000.00. Finally, she testified that she had made repairs minimally necessary to be able to drive the vehicle on the roads legally.

Harris presented a Kelley Blue Book internet printout dated in April 2008. However, the vehicle model was not the same as the victim’s vehicle, the mileage was higher, the engine specifications were different and the options were not taken into consideration. The valuation for that vehicle was \$900.00 excellent condition, \$780.00 good condition, and \$545.00 fair condition.

From the photographs, the district court found that “it didn’t look like it was in too bad of shape, but it clearly wouldn’t qualify in my mind as excellent, maybe not even good shape, but certainly was fair shape.” The district court accepted the victim’s valuation of \$2,000.00. The court determined what the victim “probably has is about \$500.00 worth of a busted-up truck in the parking lot right now.” The court deducted the \$500.00 salvage value from the pre-damage estimation to determine the award of \$1,500.00.

Substantial evidence supports the determination of the district court. The victim testified, without objection, to the vehicle’s value. The Kelley Blue Book estimate presented by the victim was of a similar vehicle and Harris’ was not. The Kelley Blue Book estimate presented by the victim was closer in time to the incident than that presented by Harris. Harris argues that the court failed to consider the depreciation of the vehicle between the incident and the date of the award. However, the value of property for restitution purposes is defined as “the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime.” I.C. § 18-2402(11)(a). In addition, even the Kelley Blue Book estimate presented by the victim, sixteen months after the incident, likely was lower than what it would have been at the time of

the incident. Finally, the decrease in value on Harris' Kelley Blue Book report from excellent condition to fair condition is approximately 40%. It is reasonable to infer a similar decrease for the victim's vehicle. The \$2,000.00 awarded is almost exactly 40% less than the Kelley Blue Book reported value for excellent condition presented by the victim. As to the \$500.00 present value, the court considered as comparable the fair condition estimate for the lower engine powered vehicle in Harris' Kelley Blue Book report.

Finally, Harris argues that the district abused its discretion by refusing to consider that Harris brought a tailgate and a bumper to the restitution hearing which he was willing to turn over to the victim. The record does not establish that these items were the exact items necessary to repair the vehicle, or the condition of the items at the time of the hearing. Nothing requires the court to consider an in-kind offer of restitution and, in fact, the statutes cited above contemplate a monetary restitution award. This argument is specious at best.

### **III.**

#### **CONCLUSION**

For the reasons stated above, the district court's order of restitution is affirmed.

Chief Judge LANSING and Judge PERRY, **CONCUR.**